HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

and

HON'BLE SHRI JUSTICE G. BHAVANI PRASAD

Writ Petition Nos.25194, 23668, 26417 of 2005 and Writ Petition (SR) No.99244 of 2005

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Between

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W.P.No.25194 of 2005

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The Government of Andhra Pradesh

Represented by its Principal Secretary to

Government, Agriculture & Co-operation

Department and another. …. Petitioners

vs

G. Siva Prasad and another …. Respondents

Counsel for the petitioners : Special Government Pleader

Counsel for Respondent No.1 : Sri M. Surender Rao

Counsel for Respondent No.2 : Sri J.R. Manohar

W.P.No.23668 of 2005

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Nandi Kumar Swamy and another …. Petitioners

vs

G.V. Siva Prasad and two others …. Respondents

Counsel for the petitioners : Sri J.R. Manohar

Counsel for Respondent No.1 : Sri M. Surender Rao

Counsel for Respondents 2 & 3 : Special Government Pleader

W.P.NO.26417 of 2005

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M. Ramalingaiah and another …. Petitioners

Vs

G.V. Siva Prasad and two others …. Respondents

Counsel for the petitioners : Sri J.R. Manohar

Counsel for Respondent No.1 : Sri M. Surender Rao

Counsel for Respondents 2 & 3 : Special Government Pleader

W.P.(SR) No.99244 of 2005

S. Venkat Reddy and five others …. Petitioners

Vs

The State of Andhra Pradesh,
Represented by its Principal Secretary
to Agriculture Department,
Secretariat Buildings, Hyderabad
and two others. …. Respondents

Counsel for the petitioners : Sri J.R. Manohar

Counsel for Respondents 1 & 2 : Special Government Pleader

Counsel for Respondent No 3 : Sri M. Surender Rao.

JUDGMENT

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Dated: 2.3.2006

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Per G.S. Singhvi, CJ

The above noted petitions are being disposed of by one order because the issues of fact and the questions of law which arises for determination by the Court are common to all the cases.

In Writ Petition Nos.25194, 23668 and 26417 of 2005, the petitioners have prayed for quashing of order dated 1.3.2005 passed by Andhra Pradesh Administrative Tribunal (for short 'the Tribunal') in Original Application No.5528 of 2004 (**G.V. Siva Prasad vs. Government of Andhra Pradesh and another**). In Writ Petition (SR) No.992444 of 2005, the petitioners have also prayed for quashing of orders dated 29.4.2005 and 4.5.2005 passed by the Tribunal in O.A.Nos.1984 of 2005 and 2058 of 2005 respectively.

For the sake of convenience, we have first noted the facts and grounds of challenge from Writ Petition No.25194 of 2005. On being selected by the Departmental Selection Committee, Shri G.V. Siva Prasad (respondent No.1) was appointed as

Agricultural Officer (Agriculture Engineering) under Rule 10(a)(i) of the State and Subordinate Services Rules, 1962 (for short 'the 1962 Rules') vide order dated 8.5.1992 issued by the Commissioner of Agriculture, Andhra Pradesh (hereinafter described as 'the Commissioner'). The services of respondent No.1 were regularized vide order dated 18.7.1995 issued under Rule 23(a) of the 1962 Rules and he was placed on probation with effect from 27.5.1992 with a stipulation that he must pass Agricultural Departmental Test and Accounts Test for Subordinate Officers Part-I as required under Rule 8(a) of the Andhra Pradesh Agricultural Subordinate Service Rules and Second Class Language Test in Telugu as per Rule 13-A(a)(i) of the A.P. State and Subordinate Services Rules. Respondent No.1 passed the requisite tests on 12.11.1995. Thereafter, by an order dated 3.8.2002 passed by the Commissioner under Rule 16(h) of the Andhra Pradesh State and Subordinate Services Rules, 1996 (for short 'the 1996 Rules'), it was declared that his probation will be deemed to have commenced with effect from 13.11.1993 FN instead of 27-5-1992 FM and he will be deemed to have satisfactorily completed the period of probation with effect from 13.11.1995 FN. Respondent No.1 protested against order dated 3.8.2002, but his representation was rejected by the Commissioner and this was conveyed to him vide letter dated 25.6.2003. After nine months, the Commissioner issued Memo dated 15.3.2004 for circulating the provisional seniority list of Agricultural Officers. In that list, the name of respondent No.1 was shown at two places. i.e. at S.Nos.36 and 64. In Column No.7 against serial No.36, his date of seniority was shown as 27.5.1992, whereas against serial No.64 his date of seniority was shown as 13.11.1993.

Respondent No.1 filed Original Application No.5528 of 2004 under section 19 of the Administrative Tribunals Act, 1985 (for short 'the Act') for setting aside proceedings dated 15.3.2004, 25.6.2003 and 3.8.2002 issued by the Commissioner. He prayed that change in the date of his regularization from 27.5.1992 to 13.11.1993 may be declared as violative of Article 14, 16 and 21 of the Constitution of India and the respondents may be directed to restore his seniority by treating his date of regularization as 25.7.1992.

In the counter-affidavit filed on behalf of the respondents (petitioners herein) it was pleaded that the date of probation of the applicant (respondent No.1 herein) was changed in accordance with the provisions of the 1996 Rules, because he failed to pass the requisite examinations within the prescribed period of probation.

By an order dated 1.3.2005, the Tribunal allowed the application filed by respondent No.1 and quashed proceedings dated 3.8.2002, 25.6.2003 and memo dated 15.3.2004 with a direction to restore his seniority by computing his date of regularization as 27.5.1992.

The petitioners have challenged the correctness of the order of the Tribunal by contending that in terms of Rule 24(c) of 1962 Rules as also Rule 16(h) of the 1996 Rules, the date of probation could be extended if the employee fails to pass the requisite departmental tests within the prescribed period of probation and extended period of probation. According to the petitioners, the date of probation of respondent No.1 was altered because he failed to pass the requisite departmental tests within the prescribed period. The further case of the petitioners is that even though order dated 8.5.1992 is shown to have been issued under Rule 10(a)(i)(1) of the 1962 Rules, respondent No.1 will be deemed to have been appointed on regular basis because his appointment was preceded by the recommendations of Departmental Selection Committee.

In Writ Petition Nos.23668 and 26417 of 2005, the petitioners have challenged order dated 1.3.2005 of the Tribunal on grounds similar to those set out in W.P.No.25194 of 2005.

In W.P.(SR) No.99244 of 2005, the petitioners have questioned the correctness of the Tribunal's order on several grounds. According to them, the Tribunal committed a grave illegality by granting relief to respondent No.1 on the basis of order dated 17.2.2004 passed in O.A.No.5274 of 2000 and connected applications because the issues raised in the two sets of cases were not similar. The pleaded case of the petitioners in this writ petition is that application filed by respondent No.1 against the provisional seniority list was not at all maintainable and the judgment of the Tribunal in the case of Horticulture Officers had no bearing on the case of respondent No.1. It is also the case of the petitioners that the seniority list of the Agricultural Officers had been finalized in 2003 itself, but respondent No.1 had not challenged the same and in order to cover this lapse and to save the limitation, he and other similarly situated persons challenged the provisional seniority list dated 15.3.2004. Another plea taken by the petitioners is that the reasons assigned by the Tribunal for rejecting the objection of limitation raised in O.A.No.5274 of 2000 and batch are clearly erroneous and contrary to the statutory provisions. The

petitioners have also challenged orders dated 29.4.2005 and 4.5.2005 passed by the Tribunal in O.A.Nos.1984 of 2005 and 2058 of 2005, respectively on similar grounds.

In the counter-affidavit filed by respondent No.1 in Writ Petition No.25194 of 2005, it has been averred that proceedings dated 3.8.2002 issued by the Commissioner for change of his date of regularization from 27.5.1992 to 13.11.1993 was ex facie illegal and the Tribunal did not commit any error by quashing the same. He has further averred that seniority list dated 15.3.2004 was rightly quashed because his name was shown at two different places with different dates of seniority. Still further, he has pleaded that order dated 8.5.1992 issued by the Commissioner cannot be treated as an order for regular appointment because Rule 10(a)(i)(1) of 1962 Rules envisages appointment only on temporary basis. According to respondent No.1, his appointment was regularized in terms of Rule 23(a) of the 1962 Rules and, therefore, the Commissioner did not have the jurisdiction to change the date of regularization on the premise that he could not pass the requisite examination within the period of probation.

Shri G. Krishna Reddy, Deputy Director of Agriculture, working in the Office of the Commissioner of Agriculture has filed rejoinder affidavit reiterating that the date of regularization of respondent No.1 was rightly changed from 27.5.1992 to 13.11.1993 because he failed to pass the examination within the specified time.

We have heard learned counsel for the parties and perused the record. One of the several contentions urged by the learned Special Government Pleader is that the Tribunal committed a jurisdictional error by entertaining the original application filed by respondent No.1. He argued that the application of respondent No.1 was clearly barred by time in so far as order dated 3.8.2002 is concerned and as no application was filed by respondent No.1 under sub-section (3) of Section 21 of the Act for condonation of delay, the Tribunal could not have entertained the same. Learned Special Government Pleader emphasized that the Tribunal cannot entertain an application filed beyond the period of one year unless delay in filing thereof is condoned under Section 21(3) of the Act. In support of this argument, learned Special Government Pleader relied on the judgments of the Supreme Court in **Secretary to Government of India vs. Shivram Mahadu Gaikwad, Hukam Raj Khinvsara vs. Union of India and others, Ramesh Chand Sharma vs. Udham Singh Kamal and others, Y. Ramamohan and others vs. Government of India**

and others and E. Parmasivan and others vs. Union of India and others.

Shri M. Surender Rao, learned counsel for respondent No.1 made elaborate arguments in support of the order under challenge and argued that the Court should not entertain the petitioners' challenge to the direction given by the Tribunal for fixing the seniority of respondent No.1 by counting his service with effect from 27.5.1992 because this is the date of his regular appointment. Learned counsel further argued that the Commissioner did not have the power to change the date of regular appointment of respondent No.1 on the pretext that he had not passed the departmental examination within the prescribed time because his initial appointment was on purely temporary basis and during the period of temporary appointment he was not required to pass any test.

In regard to the plea of the petitioners that the original application filed by respondent No.1 was barred by time, learned counsel argued that the High Court should not allow this plea to be raised for the first time because no such objection was taken before the Tribunal and on that account, his client could not even file an application under section 21(3) of the Act for condonation of delay. Shri Rao then referred to various provisions of 1962 Rules and 1996 Rules and argued that an appointment made under Rule 10(a)(i)(1) of the 1962 Rules cannot be treated as a regular appointment and a person appointed to the service pursuant to such appointment cannot be called upon to take the departmental tests, and no adverse order affecting his status should be passed on the ground of failure to pass the test within the prescribed time. In our opinion, even though in the reply filed by the petitioners to the Original Application of respondent No.1, objection of limitation was not taken and no such point was argued before the Tribunal, we are inclined to entertain this plea because the same goes to the root of the Tribunal's jurisdiction to entertain the application filed by respondent No.1 in so far as proceedings/orders dated 3.8.2002 and 25.6.2003 are concerned.

Sections 20 and 21 of the Act which have bearing on the decision of these petitions read as under:-

> **20.Application not to be admitted unless other remedies exhausted:-** (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the

relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) if a final order has been made by Government or authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For a the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

21. Limitation:(1)A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding any thing contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made, within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period. ”

If the above reproduced provisions are analysed by applying the golden rule of construction, it becomes clear that ordinarily, the Tribunal will admit an application if the applicant has not availed the other remedies available to him under the relevant service rules which provide for redressal of grievances. Sub-section (1) of Section 21 impose an embargo on the admission of an application unless the same is filed within the prescribed period. In a case where final order referred to in Clause (a) of sub-section (2) of Section 20 of the Act has been made, the application is required to be filed within one year of such order, else the Tribunal cannot admit the application. In a case where the aggrieved employee has filed an appeal or preferred representation in terms of Clause (b) of sub-section (2) of Section 20 of the Act, the application is required to be made within a maximum period of one and half year. The embargo contained against the admission of an application is somewhat diluted by the non-obstante clause contained in sub- section (3) of Section 21 of the Act, which empowers the Tribunal to admit the application after expiry of limitation if the applicant shows sufficient cause for not making the application within the period of limitation. In our view, the negative mandate contained in Section 21(1) casts a duty on the Tribunal to suo motu consider whether or not application has been filed within limitation. This necessarily means that if the application is filed beyond the period of limitation, then the Tribunal cannot admit the same unless the applicant

invokes sub-section (3) of Section 21 and satisfies the Tribunal that he had sufficient cause for not making the application within the prescribed period.

I n **Secretary to Government of India vs. Shivram Mahadu Gaikwad** (supra), the Supreme Court interpreted Section 21 of the Act and held that the Tribunal is bound to consider the issue of limitation and decide the same. The relevant extract of that judgment is reproduced below:-

> "When we turn to the judgment of the Tribunal we find that there is no mention about the question of limitation even though it stared in the face. It would immediately occur to anyone that since the order of discharge was of 7.10.1986 and the application was filed in 1990, it was clearly barred by limitation unless an application for condoning the delay was made under Section 21(3) of the Administrative Tribunals Act. No such application was in fact made. Even if it was the contention of the employee that he was suffering from schizophrenia, that could have been projected as a ground for condonation of delay under sub-section (3) of Section 21 of the said statute. Even otherwise without insisting on the formality of an application under Section 21(3) if the Tribunal had dealt with the question of limitation in the context of Section 21 we may have refrained from interfering with the order of the Tribunal under Article 136, but it seems that the Tribunal totally overlooked this question which clearly stared in the face. Even the employee made no effort to explain the delay and seek condonation. We find no valid explanation on record for coming to the conclusion that the case for condonation of delay is made out. In the circumstances, there is no doubt that the application was clearly barred by limitation. It is also difficult to understand how the Tribunal could have awarded full back wages even for the period of delay for which the employee was solely responsible. However, since application itself is barred by limitation under Section 21 of the Administrative Tribunals Act, it deserves to be dismissed."

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In **Ramesh Chand Sharma vs. Udham Singh Kamal and others** (supra), the Supreme Court referred to the earlier judgment of **Shivram Mahadu Gaikwad's** case (supra) and held that an application filed before the Tribunal after expiry of period of limitation cannot be admitted and disposed of in view of the statutory bar contained in Section 21 (1) of the Act.

Reverting to the facts of the case on hand, we find that the original application was filed by respondent No.1 on 30.8.2002 ie after more than two years of the issuance of notice/order dated 3.8.2002 and one year and two months of the rejection of his representation. He did not file application under sub-section (3) of

Section 21 of the act for condonation of delay. Therefore, the Tribunal committed a grave illegality by entertaining the application in so far as it relates to the proceedings-cum-orders dated 3.8.2002 and 25.6.2003. As a corollary, it must be held that the order passed by the Tribunal fixing the seniority of respondent No.1 by treating him to have been regularly appointed with effect from 27.5.1992 is liable to be set aside.

In view of the above conclusion, we do not consider it necessary to deal with the other points raised by the parties in support of their respective cases.

In the result, the writ petitions are allowed. Order dated 1.3.2005 passed by the Tribunal in O.S.No.5528 of 2004 is set aside. However, keeping in view the fact petitioners had not specifically raised the objection of limitation before the Tribunal, we deem it proper to remand the case to the Tribunal for fresh adjudication of the original application filed by respondent No.1 with liberty to him to file application under Section 21(3) of the Act. If such an application is filed, then the Tribunal shall decide the same after giving opportunity to the petitioners to contest the same. Liberty is also given to the parties to file supplementary pleadings before the Tribunal. The petitioners shall also be free to raise all legally permissible objections to the maintainability of the application filed by respondent No.1.

While parting with the case, we deem it proper to mention that even though the petitioners in W.P.(SR) No.99244 of 2005 have prayed for quashing of orders dated 29.4.2005 and 4.5.2001 passed by the Tribunal in O.A.No.1984 of 2005 and O.A.No.2058 of 2005 respectively no argument was advanced by the learned counsel in support of their prayer. Therefore, we have refrained from adjudicating on the legality of those orders.

G.S. SINGHVI, CJ

2nd March, 2006

G. BHAVANI PRASAD, J

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